STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY, Respondent-Appellant,	UNPUBLISHED February 13, 2014
v	No. 303672 MERC
AFSCME COUNCIL 25, Charging Party-Appellee.	LC No. 10-000024

Before: GLEICHER, P.J., and RONAYNE KRAUSE and RIORDAN, JJ.

Riordan, J. (*concurring*)

Despite any contention by Wayne County to the contrary, and as the majority correctly states, the Public Employment Relations Act imposes a duty on employers and unions to collectively bargain on matters comprising "mandatory subjects of bargaining." *Detroit Fire Fighters Ass'n, IAFF Local 344 v City of Detroit*, 482 Mich 18, 27; 753 NW2d 579 (2008). A mandatory subject of bargaining is one that imposes a significant or material impact on "wages, hours and other terms and conditions of employment." MCL 423.215(1); *Michigan Coal of State Employee Unions v Michigan*, 302 Mich App 187, 204; __ NW2d __ (2013). At the expiration of a contract, wages, hours, and other terms and conditions of employment that are mandatory subjects of bargaining survive a CBA by operation of law during the bargaining process. *Wayne Co Gov't Bar Ass'n v Co of Wayne*, 169 Mich App 480, 485-486; 426 NW2d 750 (1988).

While the decision to reduce the number of its employees or reorganize its staff was within Wayne County's prerogative as those actions would not constitute a mandatory subject of bargaining, it could not take unilateral action over the mandatory subjects without there being an impasse in negotiations or a clear and unmistakable waiver. *Id*. at 486. An employer who takes unilateral action on a mandatory subject of bargaining prior to an impasse in negotiations commits an unfair labor practice. MCL 423.210(1)(e); *Wayne Co Gov't Bar Ass'n*, 169 Mich App at 486.

In the instant matter, no impasse has been declared regarding the negotiation of the five-day, eight-hour a day work week term of employment and AFSCME Council 25 did not make a clear and unmistakable waiver of the provision. Rather, Wayne County unilaterally changed the provision with its practice of "laying off" employees for one day each week. As such, for this reason alone, the County's action constitutes an unfair labor practice and the decision of the Michigan Employment Relations Commission should be affirmed.

But, even accepting that the parties' had a general agreement to extend the terms of their CBA and then enter into negotiations, Wayne County would not prevail. A CBA is analyzed the same as any other contract, as the majority correctly points out, and the specific provisions of a CBA prevail over any arguable inconsistency with the more general provisions. *Miller v Allstate Ins Co*, 481 Mich 601, 613; 751 NW2d 463 (2008). In order to determine which provision controls, we must consider which CBA provision applies to the narrower realm of circumstances and which one applies to the broader set. *Id.*[1]

Wayne County's argument that the second sentence of Article 8.01 of the CBA, giving it the right to manage the affairs of the County including employee classifications relating to layoffs, gives it the authority to shorten the employee work week by a day is counter to the tenets of contract interpretation. Again, while the decision to reduce the number of its employees or reorganize its staff was within Wayne County's prerogative, the CBA specified the work week and hours of those employees who remained. The County's action was in clear violation of the more specific provision of the CBA, Article 20.01, which unambiguously provides that the standard employee work week "shall" be five regularly scheduled, recurring eight hour workdays. Moreover, as "shall" is a mandatory term, the plain language of Article 20.01 precluded Wayne County's reliance on the much broader Article 8.01 in support of its action of reducing all employee work weeks by one day. *Manuel v Gill*, 481 Mich 637, 647; 753 NW2d 48 (2008).

/s/ Michael J. Riordan

[1] Borrowing from statutory construction, it also is a "settled rule of statutory construction that where a statute contains a specific statutory provision and a related, but more general, provision, the specific one controls." *In re Haley*, 476 Mich 180, 198; 720 NW2d 246 (2006).